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APPENDIX

NO. 7 373
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 72-887

AMERICAN PARTY OF TEXAS, et al.,
Appellants,

versus

BOB BULLOCK, Secretary of State of
Texas, Appellee.

NO. 72-942

ROBERT HAINSWORTH,
Appellant,

versus

MARK WHITE, JR., Secretary of State
of Texas, Appellee.

Appeal from the United States District Court
for the Western District of Texas

No. 72-887 - Docketed December 15, 1972

No. 72-942 - Docketed December 30, 1972

Probable Jurisdiction Noted March 5, 1973

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TEXAS NEW PARTY, TEXAS SOCIALIST WORKERS
PARTY, ET AL. V. BOB BULLOCK, SECRETARY
OF STATE OF TEXAS, In the United States
District Court for the Western District
of Texas, San Antonio Division, No. CA-
72-H-990.

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**CHRONOLOGICAL LIST OF RELEVANT
DOCKET ENTRIES**

July 26, 1972 - Complaint filed in U.S. District Court for Southern District of Texas, Houston Division; 2 summons issued (copies to Governor and Attorney General)
July 31, 1972 - Order of Chief Judge John R. Brown constituting 3-Judge Court and consolidating case with W-72-CA-37, MO-72-CA-50 and SA-72-CA-158 in the Western District of Texas, San Antonio Division, filed in duplicate and entered. Case is transferred to the San Antonio Division for consolidation. Parties notified. District Judges D. W. Suttle and John H. Wood, Jr. and Circuit Judge Homer Thornberry comprise the 3-Judge Court.

The following instruments filed while case pending in San Antonio Division of the Western District of Texas:

Aug. 11, 1972 - SUMMONS on Bullock re/ex 8-3-72, filed.
Aug. 11, 1972 - SUMMONS on Smith, re/ex 8-3-72, filed.
Aug. 11, 1972 - Pretrial MEMORANDUM filed. (copies 3 judges, attys for pltf: see memo)
Aug. 15, 1972 - Defts' MOTION TO DISMISS w/supporting Brief filed (copies 3 judges)
Aug. 31, 1972 - STIPULATIONS of Fact, filed (copies 3 judges)
Sep. 7, 1972 - *** 3 JUDGE HEARING: on petitions attacking constitutionality of the election code of the State of Texas. State stipulated that Raza Unida Party and Texas Socialist Workers' Party have complied with all the rules and have been certified to be on the ballot. Arguments of counsel heard and concluded. *** Case taken under advisement.

Sep. 15, 1972 - MEMORANDUM OPINION of Judges Thornberry, Suttle and Wood, filed. (All relief requested by pltfs is denied and the complaints are dismissed; temporary restraining order is dissolved and all signatures obtained during said period are void; all motions not heretofore acted upon are denied; order to be entered)

Sep. 15, 1972 - JUDGMENT of Judges Thornberry, Suttle and Wood, filed. (All relief requested by pltfs is denied and the complaints dismissed; temporary restraining order dissolved and all signatures obtained during said period are null and void; all motions not heretofore acted upon are denied)

Sep. 18, 1972 - Received original case file with above instruments from U.S. District Clerk, Western District of Texas, San Antonio Division.

Oct. 16, 1972 - NOTICE OF APPEAL to the Supreme Court of the United States in behalf of all plaintiffs, filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

CA. NO. 72-H- 990

TEXAS NEW PARTY, TEXAS SOCIALIST
WORKERS PARTY, DEBBY LEONARD,
MEYER ALEWITZ, KEN GJENMRE,
BENTON S. RUSSELL, III, BOBBY
CALDWELL, DAVID HALE, RICHARD
GARCIA, ELIZABETH COX and JAMES
DAMON, Individually and on be-
half of all other persons
similarly situated.

Plaintiffs,

vs.

PRESTON SMITH, Individually and
as Governor of the State of Texas
and BOB BULLOCK, Individually and
as Secretary of the State of Texas.

Defendants.

COMPLAINT

1.

PRELIMINARY STATEMENT

Plaintiffs seek to have this Court
declare invalid and enjoin the enforcement
of various provisions of the Texas Election
Code and Article IV, § § 4 & 16 of the Con-
stitution of the State of Texas which are
challenged on the grounds that they are in
conflict with provisions of the First,

Fourteenth and Fifteenth Amendments of the Constitution of the United States. Plaintiffs complain that various portions of the Texas Code infringe upon their rights of expression, association, and their right to vote.

JURISDICTION

Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331, 1343, 2201, 2281 & 2284 and 42 U.S.C. § 1971, 1981 & 1983 and Rule 23 of the Federal Rules of Civil Procedure.

PLAINTIFFS

Plaintiffs, Texas New Party (hereafter TNP) is a political party organized statewide in Texas; Ken Gjenmre is an adult citizen of Dallas, Dallas County, Texas, TNP candidate for United States Representative, 5th District of Texas; Benton S. Russell, III is an adult citizen of Houston, Harris County, Texas, TNP candidate for Governor of the State of Texas; Bobby Caldwell is an adult citizen of Houston, Harris County, Texas, TNP candidate for State Representative, 85th District, who also was a candidate in the Democratic primary for that office; David Hale is an adult citizen of Nacogdoches, Nacogdoches County, Texas, who filed for the office of Sheriff of Nacogdoches County after February 7, 1972, but is otherwise qualified to be TNP candidate for that office.

Plaintiffs, Texas Socialist Workers

TSWP) is a political statewide in Texas; Party (hereaf, an adult citizen of party organiz, County, Texas, TSWP can- Richard Garc, States Senator; Debby Houston, Harr, led in Houston, Harris didate for Un, ice September, 1970, and Leonard has r, of age on September 11, County, Texas, ualified to be TSWP can- will be 30 ye, or of the State of Texas; 1972, otherwi, a citizen of Austin, didate for Go, xas, is an adult citizen, Meyer Alewit, otherwise qualified to be Travis County, otherwise qualified to be 21 years of or Lieutenant Governor of TSWP candidats.

the State of Elizabeth Cox is an adult Plaintiff, Travis County, Texas, citizen of Ames Damon is an adult and Plaintiff, Travis County, Texas; citizen of And voters. All Plaintiffs both are qualint as a class action on bring this co, istered voters in the behalf of all, accordance with Rule State of Tex, of the Federal Rules of 23 (a) & (b) Civil Procedu

CLASS ACTION

Plaintipring this action as a class action pursu, to Rule 23 of the Federal Rules of Civ, ocEDURE on their own be- half and on lf of all other members of their class wish to have an opportunity to consider nees on the ballot other than those o, Democratic and Republi- can parties. to the class, Plaintiffs Russell, Gje, Caldwell, Hale, Garcia, Leonard, Ale, Cox and Damon represent that:

a. The class is so numerous that joinder of all its members is impractical.

b. There are questions of law and fact common to the class.

c. The claims of Plaintiffs Russell, Gjenmre, Caldwell, Hale, Garcia, Leonard, Alewitz, Cox and Damon, are typical of the claims of the class.

d. Plaintiffs, Russell, Gjenmre, Caldwell, Hale, Garcia, Leonard, Alewitz, Cox, and Damon, will fairly and adequately protect the interests of the class.

e. The statutory requirements are generally applicable to the class, thereby making appropriate final relief with respect to the class.

DEFENDANTS

This action is brought against Preston Smith, Governor of the State of Texas and Bob Bullock, Secretary of the State of Texas having their offices in the Capitol Building, Austin, Texas. They are sued individually and in their official capacities.

FIRST CAUSE OF ACTION

V.A.C.S. Article 13.45(2) of the Texas Election Code is unconstitutional, violating the First, Fourteenth and Fifteenth Amendments of the Constitution of the United States for the following reasons:

a. The provisions requiring an aggregate number of voters of at least one percent of the total votes cast for govern-

or in the last preceding election places an undue burden on minority parties.

b. The time limit for gathering signatures for the supplemental petitions is unreasonable and discriminatory, placing an undue burden on minority parties.

c. The provisions which restricts voters signing petitions to be qualified voters, interpreted by the Secretary of State to be currently registered voters, works an undue restriction of voters' participation in the electoral process.

d. The provisions requiring certification of the officer administering the oath is unnecessarily burdensome.

e. The requirement reflected in the oath which excludes persons from signing supplemental petitions who have participated in primary voting places an undue burden on minority parties and fails to reflect a compelling state interest.

f. The provision which requires petitions requesting the names of parties' nominees to be printed on the general election ballot to be submitted within twenty (20) days after the date for holding the parties' state conventions is prejudicial to the nomination of candidates for position on the November general election ballot and is not based on a compelling state interest.

g. The deadline for the nominating petition, inasmuch as it is ninety (90) days prior to the statutory dates of certification of the nominees for the printing of the election ballot, is arbitrary and capricious and places an unreasonable burden on minority parties.

h. The provision which limits signers of the petition to those persons who have not participated in a party primary elect-

ion or in a convention prevents those signers from participating fully in the electoral process and thereby works a denial of equal protection and restricts rights guaranteed by the First Amendment.

i. The requirement of both a convention system and supplemental petitions works an undue burden and hardship on minority parties and results in a denial of equal protection.

j. The requirements pertaining to signers of petitions so restricts the number of potential signers that it places an undue burden on minority parties without reflecting a valid state interest.

The total effect of the aforementioned provisions is unreasonable, burdensome, and so oppressive as to constitute invidious discrimination in violation of the Fourteenth Amendment and places an impermissibly heavy burden upon rights of free speech, petition and association in violation of the First and Fourteenth Amendments of the Constitution of the United States, and in so doing Plaintiffs have been made to suffer and will continue to suffer irreparable injury and harm in that they and all other members of their class shall be excluded from their participation in electoral process on the county, district, state and national levels in the general election, including the right to participate in the election of the President of the United States.

SECOND CAUSE OF ACTION

Article IV, §§ 4 & 16 of the Constitution of the State of Texas and V.A.C.S.

Art. 1.05 of the Texas Election Code are unconstitutional in violation of the First, Fourteenth and Twenty-sixth Amendments to the Constitution of the United States for the following reasons:

a. The five year residency requirement is unduly restrictive in that it excludes persons otherwise qualified for the offices of governor and lieutenant governor by imposing an unduly long residency requirement which has no rational relationship to the state purpose to be served and that it constitutes a restriction on the right of interstate travel in violation of the Fourteenth Amendment's guarantee of equal protection.

b. The age requirement of thirty (30) years for holding the office of governor and lieutenant governor is arbitrary and capricious in that it reflects no compelling state interest and further is in violation of electoral process rights guaranteed by the First Amendment.

THIRD CAUSE OF ACTION

V.A.C.S. Art. 13.12(2) & 13.47a(1) of the Texas Election Code are unconstitutional in violation of the Fourteenth Amendment to the Constitution of the United States for the following reasons:

a. The requirement that candidates file three (3) months in advance of precinct conventions is very burdensome for minority parties using the convention system and no compelling state interest is at the basis of the requirement.

b. The requirement, in that it fails to distinguish the organizational needs and

problems of minority parties from those of majority parties, constitutes discrimination in violation of the Fourteenth Amendment to the Constitution of the United States.

FOURTH CAUSE OF ACTION

V.A.C.S. Art. 13.11 of the Texas Election Code is unconstitutional in violation of the First Amendment to the Constitution of the United States. The provision which makes a person who was a candidate in a primary election ineligible to have his name printed on the ballot at the succeeding general or special election as an independent violates the electoral process rights guaranteed by the First Amendment.

FIFTH CAUSE OF ACTION

V.A.C.S. Art. 6.02 of the Texas Election Code is unconstitutional in violation of the First and Fourteenth Amendments to the Constitution of the United States for the following reasons:

a. In that it violates the freedoms of speech and belief guaranteed by the First Amendment to the Constitution of the United States as made applicable to the States, and casts a chilling effect upon such beliefs by requiring from Plaintiffs an oath of ideology before permitting them to participate as candidates in the political process.

b. In that it is devoid of any defi-

nitional standards regarding among other things "our present representative form of government," and is therefore unconstitutional, vague, overbroad and void under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

c. In that it authorizes and mandates a penalty for Plaintiffs political beliefs in the absence of any compelling state need and without regard to the achievement of any valid state objective.

d. In that it arbitrarily and capriciously singles out from among all candidates or nominees for any public office in Texas those persons who do not maintain political beliefs in the status quo, thus depriving Plaintiffs of equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, Plaintiffs respectfully urge the Court to enjoin the Secretary of State from enforcing the June, 1972, deadline for the submission of sworn petitions for nomination.

Plaintiffs further urge this Court to issue a temporary restraining order prohibiting the Secretary of State of the State of Texas from invoking V.A.C.S. Articles 13.45(2), 1.05, 13.12(2), 13.47a (1), and 13.11a of the Texas Election Code.

And Plaintiffs further urge this Court to:

a. Enter its Order finding jurisdiction in this Court as herein alleged.

b. Invoke a three judge Federal Court to test the constitutionality of V.A.C.S. Articles 13.45(2), 1.05, 13.12(2), 13.47a (1) and 13.11a.

c. Declare V.A.C.S. Articles 13.45(2), 13.11a, 1.05, 6.02, 13.12(2), 13.47a(1), of the Texas Election Code and Article IV, §§ 4 and 16 of the Constitution of the State of Texas, to be unconstitutional in their entirety.

d. Declare that V.A.C.S. Article 13.45(2) is unconstitutional in each of the following particulars:

(1) The requirement of the number of names signing the Petition.

(2) The requirement that the names be signed under oath.

(3) The limitation that the person signing the Petition shall not have voted in any primary election or participated in any convention held by any other political party.

(4) That the Petition may not be circulated for signatures until after the date set for the general primary election.

(5) And that the date of the filing of the list of participants in precinct convention and petition requesting names of parties' nominees be printed on general election ballot within twenty (20) days after the date for holding the party state convention.

e. Enjoin the exclusion of the nominees of the Texas New Party and the Texas Socialist Workers Party State Conventions from the general election ballot.

f. For such other and further relief to which Plaintiffs may be entitled under law and in equity and for which they shall ever pray.

Respectfully submitted,

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(AFFIDAVIT OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

(TITLE OMITTED IN PRINTING)

DEFENDANTS' MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME the Defendants, Governor
Preston Smith and Secretary of State Bob
Bullock, and move the Court to dismiss
said Action for the following reasons, to-
wit:

I.

To dismiss the Action on the ground that this Court does not have jurisdiction and should not take jurisdiction over the subject matter of the Complaint as alleged.

II.

To dismiss the Action because the Complaint fails to state a claim against Defendants upon which relief can be granted.

III.

To dismiss the Action because Plaintiffs' Petition fails to present a substantial federal question which has not previously been resolved in the Supreme Court of the United States.

IV.

To dismiss the Action because the Plaintiffs allege in their Original Complaint that the rights here sought to be redressed are rights of citizens guaranteed by the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42, United States Code, Sec. 1983 and Sec. 1971, and therefore Plaintiffs do not establish jurisdiction allowing this Court to Act on State matters such as this absent a showing of discriminatory activity because of race or Creed, etc., by state officials and this is not sufficiently alleged.

V.

To dismiss the Action because some parts of the purported allegations and contents of the Original Complaint are vague and distorted and do not state a clear cause of action.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this Honorable Court enter an Order dismissing the Complaint filed by Plaintiffs herein and for such other relief to which Defendants may be justly entitled.

Respectfully submitted,

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First Assistant Attorney
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Assistant Attorney General

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

(TITLE OMITTED IN PRINTING)

STIPULATIONS OF FACT

TO THE HONORABLE JUDGES OF SAID COURT:

COME NOW the Defendants and the Plaintiffs in Cause No. CA-72-H-990, Texas New Party, et al. v. Preston Smith, Governor and Bob Bullock, and through their respective attorneys of record, stipulate to the following facts for the purpose of this litigation, and agree that the same may be introduced and used as evidence herein:

1. That Plaintiff Ken Gjenmre is an adult citizen of Dallas, Dallas County, Texas.
2. That Plaintiff Ken Gjenmre is the Texas New Party candidate for United States Representative, Fifth District of Texas.
3. That Plaintiff Benton S. Russell, III, is an adult citizen of Houston, Harris County, Texas.
4. That Plaintiff Benton S. Russell, III, is the Texas New Party candidate for Governor of the State of Texas.
5. That Plaintiff Bobby Caldwell is an adult citizen of Houston, Harris County, Texas.
6. That Plaintiff Bobby Caldwell is the Texas New Party candidate for State Representative, 85th District of Texas.
7. That Plaintiff Bobby Caldwell was also a candidate for State Representative,

85th District of Texas, in the 1972 Democratic primary.

8. That Plaintiff David Hale is an adult citizen of Nacogdoches, Nacogdoches County, Texas.

9. That Plaintiff David Hale filed for the office of Sheriff of Nacogdoches County, Texas, after February 7, 1972.

10. That Plaintiff Richard Garcia is an adult citizen of Houston, Harris County, Texas.

11. That Plaintiff Richard Garcia is the Texas Socialist Workers Party candidate for United States Senator from Texas.

12. That Plaintiff Debby Leonard is an adult citizen of Houston, Harris County, Texas.

13. That Plaintiff Debby Leonard has resided in Houston, Harris County, Texas, since September, 1970.

14. That Plaintiff Debby Leonard will be 30 years of age on September 11, 1972.

15. That Plaintiff Debby Leonard is the Texas Socialist Workers Party candidate for Governor of the State of Texas.

16. That Plaintiff Meyer Alewitz is an adult citizen of Austin, Travis County, Texas.

17. That Plaintiff Meyer Alewitz is an adult citizen who is twenty-one (21) years of age.

18. That Plaintiff Meyer Alewitz is the Texas Socialist Workers Party candidate for Lieutenant Governor of the State of Texas.

19. That Plaintiff Elizabeth Cox is an adult citizen of Austin, Travis County, Texas.

20. That Plaintiff Elizabeth Cox is a qualified voter in the State of Texas, and in Travis County, Texas, and in the

City of Austin, Texas.

21. That Plaintiff James Damon is an adult citizen of Austin, Travis County, Texas.

22. That Plaintiff James Damon is a qualified voter in the State of Texas, and in Travis County, Texas, and in the City of Austin, Texas.

23. That under present law, in order for Texas New Party to have its candidates placed on the ballot for the general election, it would have to meet the requirements set out in Article 13.45(2) of the Texas Election Code.

24. That under present law, in order for Texas Socialist Workers Party to have its candidates placed on the ballot for the general election, it would have to meet the requirements set out in Article 13.45(2) of the Texas Election Code.

25. That on December 9, 1971, the Texas Socialist Workers Party filed with the Secretary of State its declaration of intention to nominate candidates by convention.

26. That on February 11, 1972, the Executive Committee of the Texas Socialist Workers Party certified to the Secretary of State the names of persons who had filed with the party on or before February 7, 1972, to be candidates for the party's nominations.

27. That on March 30, 1972, the party rules of the Texas Socialist Workers Party were filed with the Secretary of State.

28. That on June 15, 1972, the Texas Socialist Workers Party filed with the Secretary of State the minutes of its state convention and the names of the nominees selected by the party.

29. That on June 28, 1972, the Texas

Secretary of State voters who the Texas Workers Party filed with the precincts to create the lists of qualified voters who participated in the party's 46,000 qualifications, and along with the party's nominated petitions signed by over 100,000 voters, who urged that the

30. That be placed on the ballot for the Secretary of State election.

On August 8, 1972, the Secretary of State should be certified that the general election of the Texas Workers Party's nominees

31. That be placed on the ballot for the Texas New Party.

On November 5, 1971, the Secretary of State should be certified that the nominees of the Texas New Party

32. That be placed on the ballot for the Secretary of State election. Declaration of intention to

certified by convention. On February 14, 1972, the names of the nominees of the Texas New Party party on or before the Secretary of State the candidates

33. That be placed on the ballot for the Secretary of State election. On February 7, 1972, to be nominating the party's nominations.

On March 28, 1972, the Texas

34. That be placed on the ballot for the Secretary of State election. With the Secretary of State New Party nominees bearing the signatures of the Secretary of State voters.

35. That be placed on the ballot for the Secretary of State election. On April 6, 1972, the Texas New Party should be certified that the minutes of the

On June 14, 1972, the Texas Secretary of State should be certified that the nominees of the Texas New Party party on or before the Secretary of State the candidates

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(Note: The District Court's Memorandum Opinion, entered on September 15, 1972, is reprinted in the Jurisdictional Statement at pages 17-36. The District Court's Judgment is reprinted in the Jurisdictional Statement at pages 37-38.)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
TEXAS, HOUSTON DIVISION

(TITLE OMITTED IN PRINTING)

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Texas
New Party, Texas Socialist Workers Party,

Debby Leonard, Meyer Alewitz, Ken Gjenmre, Benton S. Russell, III, Bobby Caldwell, David Hale, Richard Garcia, Elizabeth Cox and James Damon, the Plaintiffs in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on September 15, 1972.

This appeal is taken pursuant to 28 U.S.C. 1253.

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